PENDAFTAR DAN PEMERIKSA KERETA-KERETA MOTOR, MELAKA & ORS

v.

KS SOUTH MOTOR SDN BHD

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
HAIDAR MOHD NOOR JCA
[CIVIL APPEAL NO: J-01-40-1999]
15 FEBRUARY 2000

TORT: *Misrepresentation - Negligent misrepresentation - Public authority - Duty of care - Registrar and Inspector of Motor Vehicles ('RIMV') - Duty to keep register of vehicles registered at registry - Whether dutybound to keep a proper and accurate register - Existence of fabricated files in registry - Whether evidence of negligence - Car trader incurring commercial losses after relying on forged documents supplied by RIMV - Whether RIMV liable - Road Traffic Ordinance 1958, ss. 6(1), 7, 10(1) & (4)*

On 8 July 1980, the respondent, a car trader based in Muar, bought a second hand Mercedes Benz 240 ('the car) from two brokers. The car bore the registration number MF 9857 and was registered in the name of one Tay Boon Kok ('Tay'). Having purchased the car, the respondent submitted the registration book of the car and the documents signed by Tay to the Registrar and Inspector of Motor Vehicles, Muar ('the second appellant'), and, after verifying the particulars in the documents with the relevant file produced by the second appellant, and paying the RM20 registration fee, had the car registered to its name.

On 23 July 1980, the respondent sold the car to one Su Yong Hing ('Su'). Subsequently, the police informed the respondent that the car was a stolen car, and further that: (i) the registration number of the car MF 9857 was false as that registration number was allotted to a motor vespa by the first appellant; (ii) a file on MF 9857, as the allotted registration number of the car, was created in the office of the first appellant to replace the original file of the motor vespa; (iii) the file pertaining to the motor vespa was lost and no longer traceable; and (iv) the name Tay that was endorsed on the registration book of the car was fictitious.

Su had to surrender the car to the police as a result of the above discoveries, and the respondent, in turn, had to refund the purchase price to Su. The respondent alleged that it had suffered commercial losses as a result, *inter alia*, of the appellants' negligent representation, and in the circumstances claimed damages from the latter. Both the Sessions Court and the High Court found for the respondent and the appellants appealed. *Inter alia*, the appellants argued that whilst they had a duty to keep a register of all vehicles registered by them, that duty did not extend to their taking care that the particulars of such registered vehicles were true and accurate. Before the court, an issue arose as to extent of the appellants' liability for supplying inaccurate information on the car to the detriment of the respondent.

Held:
Per Siti Norma Yaakob JCA

[1] The appellants' argument that there is no duty on them to keep a true and proper register of vehicles registered by them is only tenable if such duty of care is owed to the public at large. This is not the criteria here. The duty to take care sought to be imposed here is owed to an aggrieved party and not to the public at large.

[2] The file that was compared for verification was not the original file of the car. It was a substituted and fabricated file. It replaced the file of a motor vespa which was allotted the registration number MF 9875, the very same registration number of the car. Likewise there is nothing known of the original file of the car that was registered as NM 6617 by the RIMV, Negeri Sembilan.

[2a] The impression created is that the registries of the first and second appellants have been penetrated into by person or persons unknown and particular files have been removed and replaced or substituted with fabricated ones. This unauthorised intrusion can only happen with the assistance of officers in the employment of the first and second appellants.

[2b] Although the forged documents were done by person or persons unknown, the fact that not only such forged documents found their way into the registries of the first and second appellants, but that they replaced legitimate files originally maintained by them, indicate that there had been gross mismanagement and negligence. It also indicates that the day-to-day operations at the registries of the first and second appellants have not been conducted properly or professionally. For that, the first and the second appellants must be made accountable.

[3] The law should be that the registries maintained by the appellants must contain accurate particulars of all vehicles registered by them. This is essential for the good working of the register system as owners of motor vehicles or anybody else involved in the motor trade conduct searches on the registers on payment of a fee, and clearly, 'a duty to take care must exist in such a case'.

[4] It follows that, every particular information recorded in the files of a registered vehicle is a representation that such information is accurate and reliable as the paying public, particularly owners of motor vehicles, would-be purchasers of such vehicles and those involved in the motor trade like the respondent, rely on such information to conduct private and commercial transactions. It is this concept of general reliance that imposes a duty on the first and second appellants to take care that all information coming from them are accurate.

[5] It is incorrect for the appellants to maintain that the second appellant was not aware of the purpose of the respondent's visit to the registry, as the act of endorsing the registration book is proof enough that a transfer transaction was afoot. That aside, the second appellant ought to have been aware that the act of transfering the car to the respondent's name may not be the last transaction conducted by the respondent on the car. The possibility of it being transferred by the respondent to a third party by way of a resale is there and, being a car trader, that possibility is real. The incidence of negligence or negligent statement and misrepresentation, in the circumstances, have been proved.

[Appeal dismissed; decisions of Sessions and High Courts affirmed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Pada 8 Julai 1980, responden, peniaga kereta yang berpusat di Muar, telah membeli sebuah kereta Mercedes Benz 240 terpakai (kereta tersebut) daripada dua broker. Kereta tersebut mempunyai nombor pendaftaran MF 9857 dan telah didaftarkan atas nama Tay Boon Kok ('Tay'). Setelah membeli kereta tersebut, responden mengemukakan buku pendaftaran kereta tersebut serta dokumen-dokumen yang telah ditandatangani oleh Tay kepada Pendaftar dan Inspektor Kenderaan-kenderaan Bermotor, Muar ('perayu kedua'), dan setelah menentusahkan butir-butir di dalam dokumen-dokumen tersebut dengan fail yang berkenaan yang dikemukan oleh perayu kedua, dan setelah membayar sebanyak RM20 sebagai fee pendaftaran, telah mendaftarkan kereta tersebut ke atas namanya.

Pada 23 Julai 1980, responden telah menjual kereta tersebut kepada seorang bernama Su Yong Hing ('Su'). Kemudiannya, polis telah memaklumkan responden bahawa kereta tersebut merupakan sebuah kereta curi, dan selanjutnya bahawa (i) nombor pendaftaran kereta tersebut MF 9857 adalah palsu kerana nombor pendaftaran tersebut telah diuntukkan kepada sebuah motor vespa oleh perayu pertama; (ii) satu fail mengenai MF 9857, sebagai nombor pendaftaran yang diuntukkan bagi kereta tersebut, telah diwujudkan dalam pejabat perayu pertama untuk menggantikan fail asal motor vespa tersebut; (iii) fail berhubung dengan motor vespa tersebut telah hilang dan tidak lagi dapat dikesan; dan (iv) nama Tay yang telah diendorskan pada buku pendaftaran kereta tersebut telah direka.

Su terpaksa menyerahkan kereta tersebut kepada polis akibat penzahiran-penzahiran di atas, dan responden pula terpaksa membayar balik harga belian kepada Su. Responden mendakwa bahawa ianya telah mengalami kerugian komersial akibat, antara lainnya, dari representasi cuai perayu-perayu, dan dalam keadaan tersebut menuntut gantirugi daripada pihak yang terkemudian itu. Kedua-duanya Mahkamah Sesyen dan Mahkamah Tinggi memutuskan bagi pihak responden dan perayu-perayu telah merayu. Antara lainnya, perayu-perayu berhujah bahawa sementara mereka mempunyai kewajipan untuk menyimpan satu daftar akan kesemua kenderaan-kenderaan yang didaftarkan oleh mereka, tugas itu tidak berlanjutan kepada mereka berhemat supaya butir-butir kenderaan-kenderaan berdaftar yang sedemikian adalah benar dan tepat. Di hadapan mahkamah, satu isu telah berbangkit berhubung dengan tanggungan perayu-perayu kerana membekalkan maklumat yang tidak tepat mengenai kereta tersebut yang menjejaskan responden.

Diputuskan:
Oleh Siti Norma Yaakob HMR

[1] Hujahan perayu-perayu bahawa tidak terdapat kewajipan ke atas diri mereka untuk menyimpan daftar kenderaan-kenderaan yang telah didaftarkan oleh mereka dengan benar dan teratur hanya boleh dipertahankan jika kewajipan berjaga-jaga sedemikian dilaksanakan kepada orang awam amnya. Ini bukannya merupakan kriteria di sini. Kewajipan berjaga-jaga yang cuba dikenakan di sini adalah terhadap satu pihak terkilan dan bukannya kepada orang awam pada amnya.

[2] Fail yang dibandingkan untuk menentusahkan bukannya fail asal kereta tersebut. Ianya merupakan fail yang digantikan dan direka. Ianya menggantikan fail sebuah motor vespa yang telah diuntukkan nombor pendaftaran MF 9875, nombor pendaftaran yang sama dengan kereta tersebut. Begitu juga tidak diketahui apa pun mengenai fail asal kereta tersebut yang telah didaftarkan sebagai MF 6617 oleh JPJ, Negeri Sembilan.

[2a] Tanggapan yang wujud adalah bahawa pejabat-pejabat pendaftaran perayu-perayu pertama dan kedua telah dimasuki oleh orang atau orang-orang yang tidak dikenali dan fail-fail yang tertentu telah dipindahkan atau digantikan dengan fail-fail yang direka. Kemasukan yang tidak dibenarkan ini hanya boleh berlaku dengan bantuan pegawai-pegawai yang berkhidmat dengan perayu-perayu pertama dan kedua.

[2b] Walaupun dokumen-dokumen palsu itu telah dibuat oleh orang atau orang-orang yang tidak dikenali, hakikatnya adalah bahawa bukan sahaja dokumen-dokumen tersebut dapat memasuki pejabat-pejabat pendaftaran perayu-perayu pertama dan kedua, tetapi ianya telah menggantikan fail-fail yang sah yang pada asalnya dikekalkan oleh mereka, menunjukkan telah berlaku salah pengurusan yang keterlaluan serta kecuaian. Ianya juga menunjukkan bahawa pengendalian harian pejabat-pejabat pendaftaran perayu-perayu pertama dan kedua telah tidak dikendalilkan dengan teratur atau secara profesional. Oleh itu, perayu-perayu pertama dan kedua haruslah dipertanggungjawabkan.

[3] Sepatutnya mengikut undang-undang pejabat-pejabat pendaftaran yang dikendalikan oleh perayu-perayu pertama dan kedua semestinya mengandungi butir-butir kesemua kenderaan yang didaftarkan oleh mereka. Ini penting bagi mengendali baik sistem daftar kerana tuanpunya kenderaan-kenderaan bermotor atau sesiapa pun yan terlibat di dalam perdagangan kereta menjalankan carian pada daftar-daftar tersebut atas satu bayaran fee, dan jelasnya "satu kewajipan untuk berhemat semestinya wujud dalam keadaan yang sedemikian."

[4] Ianya mengikut bahawa, setiap butir maklumat yang dicatatkan dalam fail-fail sebuah kenderaan yang berdaftar adalah suatu representasi bahawa maklumat yang sedemikian adalah tepat dan boleh dipercayai kerana orang awam yang membayar, khususnya tuanpunya kenderaan-kenderaan bermotor, bakal-bakal pembeli kenderaan-kenderaan sedemikian dan mereka yang terlibat dalam perniagaan motor seperti responden bergantung kepada maklumat yang sedemikian bagi menjalankan transaksi persendirian atau komersial. Konsep bergantung pada amnya ini yang mengenakan tugas kepada perayu-perayu pertama dan kedua untuk menjaga bahawa kesemua maklumat yang datang daripada mereka adalah tepat.

[5] Ianya adalah tidak betul lagi perayu-perayu menghujah bahawa perayu kedua tidak mengetahui mengenai tujuan lawatan responden ke pejabat pendaftaran tersebut, kerana perbuatan mengendors buku pendaftaran adalah bukti yang cukup bahawa satu transaksi

pemindahan sedang berlaku. Bukan itu sahaja, perayu kedua sepatutnya mengetahui bahawa perbuatan memindahkan kereta tersebut kepada nama responden mungkin bukan transaksi yang terakhir yang dikendalikan oleh responden ke atas kereta tersebut. Kemungkinan ianya dipindahkan oleh responden kepada satu pihak ketiga melalui penjualan semula mungkin berlaku dan, sebagai peniaga kereta, kemungkinan itu adalah real. Hal keadaan kecuaian atau pernyataan cuai dan salah dan salah nyataan dalam keadaan yang wujud telah dibuktikan.

[Rayuan ditolak; keputusan Mahkamah Sesyen dan Mahkamah Tinggi disahkan.]

Case(s) referred to:
Invercargill City Council v. Hamlin [1996] 2 WLR 367 ***(foll)***
Ministry of Housing And Local Government v. Sharp & Another [1970] 2 QB 223 ***(foll)***
Muhamad Mydin v. Ramiah [1965] 31 MLJ 33 ***(refd)***
Ng Ngat Siang v. Arab-Malaysian Finance Bhd & Anor [1988] 1 CLJ 800 ***(refd)***
Parramatta City Council v. Lutz [1988] 12 NSWLR 293 ***(foll)***
Sajan Singh v. Sardara Ali [1960] 26 MLJ 219 ***(refd)***
The Council of the Shire of Sutherland v. Heyman & Another [1984-1985] CLR 424 ***(foll)***

Legislation referred to:
Government Proceedings Ordinance 1956, s. 5
Road Traffic Ordinance 1958, ss. 7, 10(4)

For the appellants - Abu Bakar Jais SFC
For the respondent - Dato' Dr C Das (E Ramasamy with him); M/s E Ramasamy & Co

[Appeal from High Court, Muar; Civil Appeal No: 12-16-1992]

Reported by WA Sharif

JUDGMENT

Siti Norma Yaakob JCA:

This appeal raises a very interesting and important point of law. It is this. Does the law impose a duty on a public authority to take care that all information supplied by him to a class of persons who relies on such information, is accurate and authentic. In this instant appeal, the public authority is the registrar and Inspector of Motor Vehicles ("RIMV") at Malacca and Muar, the first and second appellants before us. Together with the third appellant, they argue that it is unfair, unjust and unreasonable to

impose such a burdensome duty on them as it would practically immobilise their statutory function of registering and maintaining a register of all vehicles on the road. Furthermore owners of motor vehicles registered with them are supplied with registration books containing material particulars of the vehicles they own and more importantly such registration books carry a warning that the owners of such vehicles need not necessarily be the legal owners. Much reliance was placed by the appellants on this warning to absolve them from liability.

The respondent on the other hand maintain that the first and second appellants are not only statutorily bound to maintain a register of all vehicles registered by them but that such duty extends to maintaining a register that contains accurate details of the vehicles which can be relied upon by members of the public. Otherwise there would be grave uncertainty and chaos amongst the public who carry out private and commercial transactions in reliance of the information gleaned from the register.

To appreciate the point of law involved, we begin by setting out the factual background, which is in no way disputed.

The respondent, who is based in Muar, Johor, are in the business of buying and selling motor vehicles both new and used ones. On 8 July 1980, the respondent was approached by two brokers who were anxious to sell a second hand Mercedes-Benz 240 D ("the car") to the respondent. The car was registered in the name of one Tay Boon Kok ("Tay") and it bore a registration number, MF 9857. The respondent took up the offer of purchasing the car from Tay after satisfying themselves that all the particulars given in the registration book issued by the first appellant appear to be in order. The respondent were also informed that the RIMV file pertaining to the car had already been transferred to the second appellant.

The purchase price of the car was agreed at RM25,000 and after Tay had signed the necessary transfer forms, the respondent took possession of the car, paid Tay RM4,000 by way of a deposit with the promise to pay the balance of RM21,000 once the car was registered by the second appellant in the respondent's name.

That same day, the respondent's clerk took all the documents signed by Tay including the registration book to the second appellant with a view to having the car transferred and registered into the respondent's name. The particulars in the documents produced by the respondent were verified with the relevant file traced and produced by the second appellant and after making a payment of RM20, the second appellant endorsed the registration book with the respondent's name as the new owner of the car.

As the car was purchased for the sole purpose of reselling it at a profit, the respondent found a ready buyer, two weeks later in the person of one Su Yong Hing ("Su") who purchased it at RM29,500 on 23 July 1980. The car was duly registered in Su's name with the ownership claimed by Public Finance Bhd., as the latter had financed the purchase.

Seven months later, sometime in February 1981, the police informed the respondent that the car was a stolen car as it was reported missing in Petaling Jaya on 26 June 1980. As the police demanded its surrender, the respondent, with the assistance of Su did so. Police investigations revealed the following facts.

1. The registration number of the car, MF 9857, is false as the car was originally allotted a registration number, NM 6617 by the RIMV, Negeri Sembilan.

2. MF 9857 was the registration number of a motor Vespa, allotted by the first appellant to one Teoh Yan Teng of 89, Jalan Tun Tan Cheng Lok, Melaka, on 19 October 1976. The file pertaining to the motor Vespa together with all relevant documents are no longer traceable. They have vanished into thin air.

3. A file on MF 9857 as the allotted registration number of the car was created in the office of the first appellant to replace the original file of the motor Vespa that had gone missing.

4. Likewise particulars of the two registered owners in the registration book of the car contain false information as to their ownership as there are no such persons known as Roseley bin Mohd. Yaacob, the first owner endorsed in the registration book and Tay, the second owner from whom the respondent purchased the car. Likewise their addresses too, were fictitious.

In July 1982, the respondent commenced proceedings against the three appellants in the Sessions Court, Muar on the ground that they had suffered a commercial loss when they refunded the whole of the purchase price of RM29,500 to Su as they were not able to give a good title of the car to him. In seeking to indemnify their loss, the respondent founded their claim on four principal and alternative causes of action namely the torts of fraud, collusion, negligence or negligent statement and misrepresentation on the first and second appellants. The third appellant is added a party by virtue of s. 5 of the Government Proceedings Ordinance 1956, and the reliefs sought by the respondent are:

(1) special damages of RM29,500.

(2) interest on the special damages from 4 March 1981 till date of realisation.

(3) general damages and

(4) costs.

After making a number of findings of fact, the Sessions Court held that the first and second appellants had been negligent in registering the car in 1980 based on documents that have been forged, resulting in loss being suffered by the respondent. Likewise the Sessions Court found that there had been negligent misrepresentation on the part of the appellants but concluded there was insufficient evidence to prove fraud, collusion or negligent statement. The respondent's claim was allowed and judgment entered against the appellants for the special damages, interest and costs but not the claim for general damages. The appellants appealed and the High Court confirmed the findings of the Sessions Court and affirmed the judgment but unfortunately we do not have the benefit of the judge's reasoning for dismissing the appeal as he has since left the judiciary. So we have only the written judgment of the Sessions Court to go by.

Before we deal with the specific arguments of both parties, it is pertinent that we identify and bear in mind the relevant statutory provisions on the duty of care imposed on the appellants. The statute in question is the Road Traffic Ordinance 1958, ("the Ordinance") and for the purpose of this appeal the following provisions are relevant.

Registration of motor vehicles and owners

6(1) No person shall possess or use a motor vehicle unless that vehicle is registered and the person for the time being entitled to the possession of the motor vehicle is registered as the owner thereof in accordance with the provisions of this Part of this Ordinance.

Keeping of Register

7. Every Registrar shall keep and maintain a register of all vehicles registered under this Ordinance on the registration area of which he is Registrar. Such register shall be in such form and contain such information, details and particulars as the Director General may direct.

Registration Numbers

10(1) Upon the registration of a motor vehicle the Registrar shall:

(a) assign to the motor vehicle the prescribed index mark indicating the registration area in which the vehicle is registered and a separate number (in this Ordinance such mark and number are referred to collectively as "the registration number"), and such registration number shall continue to be the registration number of such motor vehicle until it is broken up, destroyed or sent permanently out of Malaysia, and such registration number shall not be assigned to any other motor vehicle:

...

(b) register the person by whom the application for registration was made as the owner of the motor vehicle; and

(c) issue to that person a registration book in the prescribed form.

(2) ...

(3) ...

(4) The decision of the Registrar under paragraph (b) of subsection (2) of this section shall be final and conclusive for the purpose of this Ordinance, but shall not be deemed to prejudice or to affect in any way the right of any other claimant to the ownership of the motor vehicle to cause his rights to be determined by a court, and the Registrar shall amend the register in accordance with any final order made by such court.

Before us, Encik Abu Bakar Rais, senior federal counsel for the appellants conceded that whilst s. 7 of the Ordinance imposes a duty on the part of the first and second appellants to keep a register of all vehicles registered by them, that duty does not extend to their taking care that all particulars of such registered vehicles maintained by them are accurate and true. He contended that to do so, is to impose a very heavy and burdensome duty on the first and second appellants as it is practically impossible to ascertain the correctness or accuracy of every information of each vehicle submitted for registration. As such, he concluded that it is unfair and unreasonable to expect the first and second appellants to vouchsafe the correctness and accuracy of any particular matter in the register maintained by them. This is particularly so as on the facts of this appeal they were not the authors of the inaccurate particulars appearing in the file records. Expressed in another way although there is a duty to keep a register there is no duty to maintain a true and proper one.

This argument, we consider is tenable if the duty of care is owed to the public at large. This is not the criteria here. The duty that is sought to be imposed on the first and second appellants is the duty to take care that all information given by them to a paying class of persons who seek that

information, is accurate to enable that class of persons to conduct private and commercial transactions in relation to the particular vehicle on which the information is sought. In other words the duty to take care is owed to an aggrieved party and not to the public at large.

It must be remembered that on the evidence before the Sessions Court, the respondents's clerk had gone to the registry of the second appellant armed with all the necessary documents for the sole purpose of finalising the sale of the car by having the car transferred into the name of the respondent as its new owner. The clerk had waited for one hour for the file on the car to be traced and after the necessary verification was made of all particulars in the documents produced by the clerk against those in the file, and on payment of the registration fee, the registration book was endorsed with the respondent's name. It is therefore not correct for the appellants to maintain that the second appellant was not aware of the purpose of the clerk's visit to the registry as the act of endorsing the registration book is proof enough that a transfer transaction was afoot and if indeed the original file of the vehicle bearing registration number, MF 9857, had been produced, the second appellant would not have made the transfer.

It must also be remembered that on the findings of the Sessions Court, the contents of the file that was compared for verification was not the original file of the car. It was a substituted and fabricated file. It replaced the file of a motor Vespa which was allotted the registration number, MF 9857, the very same registration number of the car. The file of the motor Vespa has since gone missing. Likewise there is nothing known of the original file of the car that was registered as NM 6617 by the RIMV, Negeri Sembilan.

Those were the files which the first and second appellants say were kept under lock and key and no unauthorised person had access to them. Yet they have conveniently gone missing or untraceable. The impression that is created in our minds is that the registries of the first and second appellants have been penetrated into by person or persons unknown and particular files have been removed and replaced or substituted with fabricated ones. This unauthorised intrusion can only happen with the assistance of officers in the employment of the first and second appellants. On the facts of this case this is the inescapable conclusion that we have reached as by no other means can any file maintained in the manner as made out by the first and second appellants, be reported missing or substituted.

Both the first and second appellants had the absolute control of the day-to-day management of their respective registeries and the fact that files had gone missing is proof enough that there had been lack of supervision on the part of the first and second appellants and that omission we say points to there being lack of due diligence in the management and running of the two registries.

A somewhat similar fact situation arose in the case of the *Ministry of Housing And Local Government v. Sharp And Another* [1970] 2 QB 223, where a careless clerk in a local land registry issued, on request, an official certificate to would-be purchasers of a piece of land that the land was free from any charge when in fact the Ministry of Housing and Local Government had already registered a charge two years earlier. The purchasers completed the sale based on the certificate. As the Ministry could not claim the benefit of the charge from the purchasers, they sued the registrar of the land registry and the local council on the ground that they were responsible for the mistake of the clerk.

When dealing with the registrar's obligations under the English Land Charges Act 1925, the Court of Appeal at p. 265 of the report stated as follows:

> The fundamental obligation of the registrar is to keep the register, and in return he receives the prescribed fees. He must enter in the register every charge which is duly submitted to him. He must allow any person to search the register: and if asked, he must make an official search and issue an official certificate setting forth the result.
>
> The object of the register is to provide **security** for two classes of people, incumbrancers and purchasers.
>
> By requiring a search, a purchaser is entitled to know exactly that charges incumber the land, and to adjust his price accordingly. If the registrar issues an official certificate, showing the land to be clear of any charge, that is conclusive in favour of the purchaser.

In finding the registrar liable, the court at p. 266 of the report then adopted the following reasoning:

> He must answer for the mistakes of the clerk and make compensation for the loss. He is a public officer and comes within the settled principle of English Law that when an official duty is laid on a public officer, by statute or common law, then he is personally responsible for seeing that the duty is carried out. He may and often does, get a clerk or minor official, to do the duty for him, but if so, he is answerable for the transgression of the subordinate ... Sometimes it is an absolute duty, in which case he must see that it is performed absolutely. At other times it is only a duty to use due diligence in which case he must

> see that due diligence is used. But, in any event, if the duty is broken, and injury done thereby to one of the public, then the public officer is answerable. The injured person can sue him in the civil courts for compensation. ... By law he is responsible. He will, of course, if he is wise, insure himself against his liability: or get the Government to stand by him. But liable he is – to the person injured.

Likewise on the facts of the instant appeal, although we acknowledge that the forged documents were done by person or persons unknown, the fact that not only such forged documents found their way into the registries of the first and second appellants, but that they replaced legitimate files originally maintained by them, indicate that there had been gross mismanagement and negligence. We are also informed that this is not an isolated case but that there had been wide transgression and that this appeal is the forerunner of more cases to come before the courts. No reason was given how this could have happened and we can only conclude that the day-to-day operations at the registries of the first and second appellants have not been conducted properly or professionally. For this dereliction of duty, we say that the first and second appellants must be made accountable. It is our opinion that the law should be that registers maintained by them must contain accurate particulars of all vehicles registered by them. This is essential for the good working of the register system as owners of motor vehicles or anybody else involved in the motor trade conduct searches on the registers on payment of a fee and "clearly a duty to take care must exist in such a case." See the case of *Ministry of Housing and Local Government v. Sharp and Another (supra).*

We also consider that every particular information recorded in the files of a registered vehicle is a representation that such information is accurate and reliable as the paying public particularly owners of motor vehicles, would-be purchasers of such vehicles and those involved in the motor trade like the respondent, rely on such information to conduct private and commercial transactions. It is this concept of general reliance that imposes a duty on the first and second appellants to take care that all information coming from them are accurate. See the Privy Council case of *Invercargill City Council v. Hamlin* [1996] 2 WLR 367, and the Australian case of *Parramatta City Council v. Lutz.* [1988] 12 NSWLR 293. As was said by the High Court of Australia in the case of *The Council of the Shire of Sutherland v. Heyman And Another* [1984-1985] CLR 424, reliance "has always been a important element in establishing the existence of a duty of care. It has been suggested that liability in negligence is largely, if not exclusively, based on the plaintiff's reliance on the defendant's taking care in circumstances where the defendant is aware or ought to be aware of that reliance."

The appellants seek to disclaim any knowledge that the respondent relied on the information given on the ownership of the car to escape liability. This we say is a non-issue as the name and identity of the respondent is a real give-away. The second appellant must have been aware or ought to have been aware that the act of transferring the car into the respondent's name may not be the last transaction conducted by the respondent on the car. The possibility of it being transferred by the respondent to a third party by way of a resale is there and being a car trader that possibility is real.

Finally, we come to the appellants' submission that no liability can be attached to them by virtue of the warning expressed in Bahasa Malaysia in the registration book which reads as follows:

> Pemilik berdaftar ialah orang yang menyimpan kereta itu. Ia boleh jadi atau tidak pemilik sah bagi kereta itu.

We had asked Encik Abu Bakar Jais as to the origin of the warning in the registration book. He was only able to say that it may well have developed from s. 10(4) of the Ordinance. If that be so, we consider the warning has no relevance to the issue at hand as the provisions of the sub-section refer to the right of any claimant, other that the registered owner to claim title to the car and that the claimant's right can be determined by a court of law. Clearly the sub-section refers to the manner by which disputed claims of title to a registered car can be resolved. Here we are not concerned with the disputed title of the car but the extent to which liability can be attached to the first and second appellants for supplying inaccurate information on the car to the detriment of the respondent who had acted on such inaccurate information. Cases like *Sajan Singh v. Sardara Ali* [1960] 26 MLJ 219, *Muhamad Mydin v. Ramiah* [1965] 31 MLJ 33 and *Ng Ngat Siang v. Arab-Malaysian Finance Bhd. & Anor.* [1988] 1 CLJ 800; [1983] 3 MLJ 319, relied upon by the appellants testify to this but they do not resolve the real issue at hand as they concern a different subject matter altogether.

On the totality of the evidence before the Sessions Court, we are satisfied that the incidence of negligence or negligent statement and misrepresentation as particularised in paras 18 and 19 of the amended statement of claim have been proved and we accordingly affirm the findings of the Sessions and High Courts, and dismiss this appeal with costs.